

**REMARKS**

A Notice of Appeal was filed along with a petition for an extension of time on 7 November 2003 to keep the application pending. Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

This invention provides for, *inter alia*, herbicidal composition which may be used against harmful plants in tolerant or resistant crops of sugar beets. The inventive composition and methods employ a herbicidal combination comprising at least two different herbicides.

Claims 21-47 are pending in this application. Claims 21, 30, 34, and 36 are currently amended. This amendment cancels claims 23, 33, 35, and 45, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. Applicants reserve the right to file divisional applications to pursue the full scope of the claims. No new matter has been added by these amendments. Support is found throughout the specification and from the pending claims.

Claims 21, 23-31, 33, 35, 45, and 47 stand rejected under 35 U.S.C. §102(a) and §102(e) for allegedly being anticipated by U.S. Patent 6,239,072 ("Flint"). In view of the amendments to the claims it is urged that this rejection is moot and should be withdrawn. Applicants urge that Flint does not teach the instantly claimed compositions.

The Office Action contends that Flint teaches the combination of glyphosate with several of Applicants' secondary herbicides for use in controlling weeds and volunteer crop plants in transgenic glyphosate resistant crops, such as sugarbeets. However, the present claims no longer recite combinations comprising glyphosate and imidazolines or their salts. Accordingly, Flint cannot anticipate the present claims and reconsideration of these rejections are requested.

Claims 21 to 47 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Flint in view of Novartis. Specifically, the Applicants respectfully traverse the rejection, as the cited documents do not teach or suggest a skilled artisan herbicidal compositions comprising one or more herbicides of type (A) and one or more herbicides of type (B).

The Flint patent relates to control of volunteer plants expressing a gene imparting glyphosate tolerated in a field of a glyphosate-tolerant crop species by use of tank mixtures or premixtures of a glyphosate herbicide with a second herbicide with a different mode of action, activity against the volunteer plant species, and lack of activity against the crop species. However, the present claims no longer recite combinations comprising glyphosate and imidazolines. Hence, Flint cannot teach or suggest the present invention.

Novartis does not remedy these deficiencies. Novartis teaches the utility of phospho-herbicides such as glufosinate and glyphosate in synergistic combinations with additional herbicides agents for control of phospho-herbicide resistant crops such as maize, soya, cotton, rape, beet, and sugar cane. Novartis, however, does not provide the requisite suggestion or motivation that would lead a skilled artisan to combine its teachings with that of the Flint patent in order to practice the instantly claimed invention, especially since present claims no longer recite combinations claimed in Flint such as glyphosate and imidazolines.

Thus, as Flint and Novartis fail, both alone and in combination to teach, suggest or motivate a skilled artisan to practice the instantly claimed invention, the Section 103 rejection must fail. Further, “obvious to try” is not the standard upon which an obviousness rejection should be based. As “obvious to try” would be the only basis by which the obviousness could stand, it is respectfully submitted that the Section 103 rejection must fail for this reason as well.

Therefore, reconsideration and withdrawal of the §103(a) obviousness rejection is respectfully requested.

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance, or at least in better condition for appeal. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By:



Mark W. Russell  
Reg. No. 37,514  
(212) 588-0800